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June 11, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

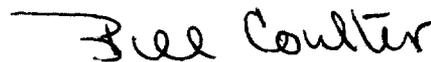
Reference: CC Docket No. 96-45  
Subject: Report of Ex Parte Presentation

Dear Ms. Salas:

Enclosed please find one (1) copy of a Report of ex parte presentation made on Wednesday, June 10, 1998 by Jane Walters, Commissioner, and Jacqueline Shrago, Director, both of the Tennessee State Department of Education, and the undersigned to Irene Flannery of the Common Carrier Bureau. Also in attendance was Debra Kriete of the Schools and Libraries Corporation. This Report responds to matters placed in issue in the above-referenced proceeding by Integrated Systems & Solutions, Inc. with regards to the State's Application for Universal Service supports.

Should you have any questions, please feel free to contact the undersigned.

Sincerely,



William K. Coulter, Esq.

Enclosure

Copy: Ramsey Woodworth, Esq.  
Jeffrey Linder, Esq.  
Irene Flannery, Esq.  
Debra Kriete, Esq.

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## SUMMARY

State of Tennessee  
Department of Education  
State Capital  
Nashville, Tennessee

ISIS 2000, an unsuccessful bidder for a contract competitively-awarded by the State to provide Internet Access Service for the State's K-12 schools, after having unsuccessfully exhausted the State's review processes, now has requested the Commission to deny Universal Service Fund support to the State's schools and the winning bidder, ENA. The ISIS 2000 challenge is directed to four (4) elements of the ENA/Tennessee School Program. The State has reviewed each of these elements and has found them to be unfounded. The State also has found that it has carefully implemented its Procurement Rules and those of the USF Program.

1. The Tennessee Schools' Contract favors the lowest pre-discount price, and the most cost-effective bid, in full compliance with both State and FCC Rules.
  - ISIS 2000 asserts that its bid was for "substantially the same services" as ENA "at a \$23 million lower price". It then asks the FCC to designate the ISIS 2000 price as the benchmark for determining the "lowest pre-discount price" and the "most cost-effective bid". On the contrary, the State has found that the ISIS 2000 bid was for a substantially different, and a technically and operationally inferior service, and has found the ISIS 2000 bid effectively "non-responsive" on both procedural and technical grounds. It subsequently found that the ISIS 2000 bid also would have been the most expensive for the schools, based on its reliance on future change orders, fluctuating costs and ill-defined tasks for cost recovery. Moreover, the State has found, again contrary to the ISIS 2000 argument, that the identification of the State's available funding to all bidders equally at the time of the RFP (as is also required in SLC Form 471) acted to increase competition, not decrease it, and thereby to further reduce pre-discount prices. Finally, since the award to ENA was based first on technical grounds and then with all different levels of USF funding, as approved by the FCC and the SLC, the State found the award was fully competitive and properly considered "cost as a primary consideration" for both the Schools and the USF.
  - ISIS 2000 also makes a number of unspecific allegations designed to question the State's statutory procurement processes and its "motives". However, ISIS 2000 well knows that the State's Plan maximizes the availability of USF funding to all of America's schools, regardless of location. By all comparisons that the State has been able to verify, the Tennessee cost to support its level of Internet access, is better than any cost in the country! The USF cost of the ENA contract is less than \$17 per student, per year. And this is not simply to

achieve "an initial level connection capability" (as proposed by ISIS 2000) but rather for a guaranteed 3 hours of Internet access per student per week at a delivery rate of 2 web pages per minute for up to 90,000 computers (as proposed by ENA).

2. The Tennessee Schools' Decision to transition to a full service Internet Access Provider is within the State's purview, is eminently reasonable, and is fully supported by the record.
  - ISIS 2000 asserts that the State should keep the School's Information Systems Network and that the decision to sell the network, and to move to an Internet Access Service, "has no economic purpose" except to increase USF funding. The decision to dispose of the major portions of this network and to obtain an Internet Access Service was found by the State to be based on solid technical and operational grounds and on clear and convincing advantages to the children of Tennessee. The State found also that to keep the network would have been operationally and technically impractical, as well as more expensive. The record is replete with support. The School's decision to sell the major portions of the network to ENA also was based on the fact that all other alternatives would have increased State and USF spending and, as envisioned by ISIS 2000, could have required dual networks to be operated and maintained during the transition. USF funding was reduced by between \$4 and \$26 million through this Information Systems transition action.
  
3. Internet Access Services are specifically eligible for funding under the FCC Rules, and the State's Service is considered common in the industry.
  - ISIS 2000 asserts that the ENA service is "unique" and, therefore, non-eligible. It provides absolutely no support for this view. The Schools will utilize the ENA service only for Internet access. Internet Access Services are specifically addressed in detail by the FCC's Rules and are specifically determined by the Rules to be eligible. ENA, the successful bidder, unlike ISIS 2000, offered such a service in the "traditional" fashion. The service offered by ENA is identical to Internet services offered to businesses as applied for by BellSouth, UUNET, Worldcom, Intermedia, AT&T and others. The fact that ISIS 2000 determined not to take advantage of USF funding options in its proposal, does not detract from the ENA eligibility. ISIS 2000 proposed a cost-plus-fee maintenance service for State-owned and purchased incremental equipment.
  
  - ISIS 2000 also asserts that USF funding is not available since PUC discounts for ISDN circuits have been applied for by the State's schools. The State has provided the FCC with the Order of the Tennessee Regulatory Commission approving this added support for schools. The FCC Rules clearly permit, and encourage, this for schools.

4. Internet Access Services are, by their very nature, private commercial services and their use and funding was specifically directed by the FCC Rules.

- ISIS 2000 asserts that the award to ENA is "a guise to fund the construction of a privately-owned commercial wide-area network" valued at "\$160 million" with USF funds. Almost all, if not all, Internet Access Networks by definition are privately-owned commercial wide-area networks. Further, all such networks serving schools will, in effect, be funded in whole or part with USF funding. Indeed, the construction and use of such networks is the purpose behind the structure of the Congressional USF funding decision. This is particularly true for Tennessee where no such services are now available in many small and disadvantaged rural school locations.
- Most importantly, however, the schools will utilize the full capacity of the ENA network during the funding periods. Thus, there will be no commercial service. Further, all school connections will be dedicated to the schools and the schools will be the exclusive users. Any other use, of course, would require FCC approvals (and allocations) for ineligible users. Also, the State's independent Information Systems Council has reviewed in detail the advantages and disadvantages of disposing of the major portions of the School's network (no USF funding was requested for the portions of the network retained) and of follow-on system requirements. It determined that the rapid changes in technology and the early obsolescence of equipment supported obtaining an Internet Access Service from ENA rather than purchasing dedicated State equipment, with its constant need for maintenance, repair, upgrading and technical support in remote areas.

In summary, the State has carefully and thoroughly implemented its Competitive Procurement Rules. It has carefully and thoroughly followed the FCC's USF Funding Rules and it has arrived at a result which is technically, operationally and financially the best for the Fund, the State and the Schools. The inability to fully fund and implement this Program would destroy its aggregation economies, leave the disadvantaged rural schools at greatest risk, and cause greater costs to the USF. The ISIS 2000 Petition fails to recognize this, and, therefore, should be rejected.

June 10, 1988